HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPMS No. 640/06

Nanhu Singh

Vs

Deputy Director of

Consolidation & others

Approved for reporting

Not approved for reporting

Date of decision 8.06.06

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 640 (M/S) OF 2006

Nanhu Singh,
S/o Ghasiram,
R/o Village Shimla Bahadur,
Presently resided at Khera, Rudrapur,
Tehsil-Kichha, District-Udham Singh Nagar.

.....Petitioners.

Versus

1. Deputy Director of Consolidation, Udham Singh Nagar.
2. Settlement Officer Consolidation,
   District-Udham Singh Nagar.
3. Consolidation Officer, Kichha (U.S. Nagar).
4. Hridoyanand, S/o Shiv Poojan, R/o Village Shimla Bahadur, Tehsil Kichha, District-Udham Singh Nagar.
5. Nandji, S/o Shivpoojan, R/o Village Shimla Bahadur, Tehsil-Kichha, District-U.S. Nagar.
6. Om Prakash, S/o Sh. Bhagwan Dass,
   R/o Khera Rudrapur,
   Tehsil – Kichha,
   District-Udham Singh Nagar. ... Respondent

Dated: 8.6.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Nares Chhabra, Advocate for the petitioner and Standing Counsel for the respondents no. 1 to 3.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 27th February, 2006 passed by the Court of respondent no. 1 by way of rejecting the substitution application.

Briefly stated, the objections under Section 9 of the Consolidation of Holdings Act were filed by the petitioners.

During the pendency of the case, the father of the respondents no. 4 and 5 Shri Shiv Poojan died on 02.03.1999 and an application for substitution was filed on 13th December, 1999 along with the application under Section 5 of the Limitation Act. The petitioner has filed objection to that application.

Both the courts below have recorded a finding that the cause for delay was sufficient and has condoned the delay for filing the substitution application.

It is well established that liberal view should be taken while condoning the delay as the party is going to suffer on account of the delay. As held in the case of ***N. Balakrishnan v. M. Krishnamurthy Supreme Court & Full bench Rent Cases, 1998 page 427,*** the Apex Court has also held that liberal approach should be taken while condoning the delay in filing the application. The observations of the Apex Court are quoted below:

> *"Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*
>
> *It must be remembered that in every case of delay, there can be some lapse on the part of the litigant*

concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

The petitioner has argued that there was no application for setting aside the abatement order as abatement was automatic.

A perusal of the application for substitution shows that the application under Section 5 of the Limitation Act may be allowed. Affidavit has also been filed along with the application. Paragraphs 2, 3 and 4 are quoted below:-

"2. यह कि शपथकर्ता ग्रामीण परिवेश के न समझ इन्सान है जिस कारण प्रार्थना पत्र आज से पेश्तर प्रस्तुत नहीं किया जा सका।

3. यह कि विलम्ब की त्रुटि को क्षमा करते हुए शपथकर्तागण को मामला वाला प्रति स्थापित किया जाना न्याहित में आवश्यकीय है अन्यथा शपथकर्ता गणों को बेहद हक तलफी होगी और उनकी कभी पूरी होने वाली अपार अपरिहार्य क्षति होगी। व्यर्थ की मुकदमें बाजी को बढ़ावा मिलेगा जिसमें शपथकर्तागण तबाह बरबाद हो जायेंगें।

4. यह कि मृतक वादी/आपत्तिकर्ता श्री शिवपूजन के वकील महोदय ने हमें इस कानूनी आवश्यक से अवगत नही

कराया अन्यथा शपथकर्तागण समय से इस हेतु प्रार्थनापत्र प्रस्तुत करते। विलम्ब प्रस्तुतीकरण प्रार्थना पत्र की त्रुटि न्यायहित में क्षमा किये जाने येाग्य है”

The respondents have prayed that the delay in filing the substitution application may be condoned and therefore, there is no specific requirement of filing an application for setting aside the abatement when the application has already been filed for condonation of delay.

In Ram Samujh V. Ist ADJ, Jaunpur, 1996(1) ARC 547, it has been observed as under:-

“9. It is well settled in law that in the matters of condonation of delay, the Court should adopt liberal approach. A reference in this regard may be made to the decision in Collector, Land Acquisition, Anantnag v. Kaliji, AIR 1987 SC 1353, wherein it has been observed as Under:-

“The legislature has conferred the power to condone the delay by enacting Section 5 of Indian Limitation Act, 1963, in order to enable the Courts to do substantial justice to parties, by disposing of matters on merits. The expression “sufficient case” disposing of matter on merits. The expression “sufficient case” employed by the Legislature is adequately elastic to enavle the Courts to apply the law law in a meeting-full manner, which subserves the ends of justice that being the life purposes for existence of the institution of Courts. It is common knowledge that this Court has been making justifiably liberal approach in the matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the heirarchy principle as it is realized that:-

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can resuit in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when

delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) "Every days' delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for other side cannot claim to have vested right in injustice being done because of non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice oriented approach from his perspective, there was sufficient cause for condoning the delay in the institution of the appeal."

10. In so far as the question of abatement of appeal is concerned Order XXII of CPC deals with the death, marriage, insolvencies of parties and abatement of suits which is also applicable to appeals filed under the said Court. Abatement of suit or appeal takes place if onj thue death of a necessary party to the suit or appeal right to sue does not survives. In case of more than one plaintiff or defendants the suit or appeal abates on the death of one of them if the right to sude does not survive to the surviving plaintiffs against the defendants and if the heirs of the deceased are not brought within the time prescribed under the law. The Suit abates as a

whole or in part, as the case may be. Similarly, in cases of appeal if the decree under the appeal is joint and indivisible and is likely to result in two inconsistent decrees, the whole appeal abates otherwise only in part. Rule 6 of Order XXII CPC provides that no abatement shall take place if the party dies after hearting the case and before pronouncement of the judgment. In the instant case, Govind had died long after the suit was decreed. In was under the facts and circumstances stated above that his name or the names of his heirs were not mentioned in the memo of appeal. The appellants have filed application for impleadment of the heirs of Govind and also an application for condonation of delay. In the application for condonation of delay and for impleadment of the heirs of the deceased in the appeal a prayer for setting aside the abatement is implicit.

11. A reference may also be made to the decision in Union of India v. Kundan, AIR 1977 Delhi 38."

In view of the aforesaid facts, I do not find any illegality in the orders passed by the two courts below under Article 226/227 of the Constitution of India while allowing the substitution application.

Writ Petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

08.06.2006
Rathour